



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI- 87-36

### FACTS:

You are a former member of a Board of Selectmen (Board). While a Selectman, you were designated a special municipal employee.[1] The Board is currently seeking applicants for the position of Alternate Building Inspector. The Alternate Building Inspector works under the supervision of the Board. You would like to apply for the job.

### QUESTION:

Are you eligible for appointment to the position of Alternate Building Inspector?

### ANSWER:

Yes, provided you have waited thirty days from the date you completed your services as Selectman.

### DISCUSSION:

Your question requires us to reconcile two seemingly contradictory aspects of the conflict law: the requirements of s.21A and s.20(g)paragraph 2. On the one hand, s.21A requires a municipal board member to wait thirty days from the date he terminates his board membership before he is eligible for appointment to a position under the supervision of his board. Alternatively, s.20(g)paragraph 2 requires a selectman to wait six months after he terminates his selectman's services before he is eligible for appointment to an additional municipal position. In essence, your question is whether a "special municipal employee" selectman must follow the six month "cooling off" period required under s.20(g)paragraph 2 or the less restrictive thirty day period under s.21A.

We conclude that the provisions of s.20(g)paragraph 2[2], including the six month "cooling off" period, only apply to regular selectman.[2] Consequently, as a "special selectman" you are subject to the provisions of s.21A of the conflict law, and are required to wait thirty days from the date of your resignation as a Selectman before you are eligible for appointment as Alternate Building Inspector.[3]

This conclusion reaffirms a 1982 Commission opinion. In EC-COI- 82-106 we analyzed the then recent 1982 amendment to the conflict of interest law (St 1982, c. 107; G.L. c. 268A, s.20(g)paragraph 2)[4] which set forth rules for town employees who also wanted to be selectmen. We were specifically asked to rule on whether a town school teacher who was elected to the position of selectman and designated a "special" could continue

to receive the compensation from both jobs in light of the 1982 amendment. The amendment provided, in part, that town employees could be elected as selectmen if, among other things, they received only one salary.

We concluded that the 1982 amendment (G.L. c. 268A, s.20(g)paragraph 2) did not repeal the earlier provisions for "special municipal employees" but rather was intended to apply only to those selectmen who were previously prohibited from receiving compensation for a second municipal office or position and not to selectmen who had been classified as special municipal employees under s.1(n). EC- COI-82-106.

The Commission's present finding that all the provisions of that 1982 amendment (including the requirement that a selectman wait six months from his termination as selectman before he may obtain additional town appointments) do not apply to "special" selectmen is consistent with and relies on our previous opinion. This conclusion is further based on sound rules of statutory construction and supported by the Commission's obligation to give the conflict law a workable meaning. See, *Graham v. McGrail*, 370 Mass. 133,140(1976).

The 1982 amendment for selectmen "cannot be read in isolation but must be considered in connection with the main object to be accomplished." *Robertson v. McCarte*, 13 Mass. App. 441,442(1982) quoting *Board of Education v. Assessor of Worcester*, 368 Mass. 511, 513(1975). The goal of the 1982 amendment was to allow selectmen to hold two town positions.[5] This made no sense as applied to "special" selectmen who already could hold two town jobs and be paid for both.[6] See, EC-COI-82-106.

The language of the amendment itself supports this reading. The amendment provides that nothing in s.20 should be construed to prohibit a town employee from also being a selectman provided that "such selectman shall not... receive compensation for more than one position ...," G.L. c. 268A, s.20(g)paragraph 2. The words "such selectman" can reasonably be read to place a limitation on the application of s.20 to only those selectmen who otherwise were unable to hold two positions, i.e., regular selectmen. "It is not to be assumed that words in a statute have no force or effect" *Gilliam v. Board of Health of Saugus*, 327 Mass. 621,623 (1951).

In construing the provisions of s.21A (thirty day waiting period) and s.20(g)paragraph 2 (six month waiting period) we must attempt "to give reasonable effect to both ...and create [] a consistent body of law." *Boston v. Board of Education*, 392 Mass. 788,792(1984). Reasonable effect is given to both if s.20(g)paragraph 2 applies only to regular selectmen. To conclude otherwise would have special selectmen follow only some of the provisions of s.20(g)paragraph 2 only some of the time.[7] The construction of s.20(g)paragraph 2 outlined herein is one "in harmony with prior enactments... [and] give[s] rise to a consistent body of law." *Hadley v. Amherst*, 372 Mass. 46,51(1977).

DATE AUTHORIZED: September 16, 1987

[1] A selectman may be designated as a "special municipal employee" if he serves in a town with a population of 5000 or less and his position has been classified as such by the Board of Selectmen. G.L.c. 268A, s.1(n).

[2] Were you not a "special municipal employee" selectman, you would be subject to all of the requirements of s.20(g)paragraph 2. Regular selectmen must follow the mandatory "cooling off" period of six months, after they terminate their select-man services, before they are eligible for appointment to any additional paying municipal positions. See, EC-COI-87-35 issued this day.

[3] If the Alternate Building Inspector position were not under the supervision of the Board of Selectmen, a former special selectman would have no waiting period for eligibility to appointment to that job. It is important to note that the provisions of s.21A apply only when a municipal employee seeks a job under the supervision of his own or former board.

[4] This 1982 amendment provides that section 20 of the law "shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have a right to chose which compensation he shall receive; and provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require." G.L. c. 268A, s.20(g)paragraph 2.

[5] The 1982 amendment was enacted in response to the Walsh v. Love, Norfolk Superior Court Civil Action No. 132687 (July 2, 1981) and a Commission Advisory opinion EC-COI-80-89, where it was unlawful under the conflict of interest law for a full-time school teacher also to hold the position of town selectman and be paid in both positions.

[6] G.L c. 268A, s.20(c) and (d) permit special municipal employees, including selectmen, to hold a second paying town job provided that they either receive the Board's approval or that the activities of one job do not require participation in the activities of the agency of the second job.

[7] For example, s.20(g)paragraph 2 provides that a selectman is ineligible for appointment to any municipal position which he did not hold before his election. The exemptions for "specials" renders this provision inapplicable to "special" selectmen. If the six month waiting period of s.20(g)paragraph 2 applied to a "special" selectman, the

selectman could be required to wait six months to apply for the same job which he could have held while he was a selectman. his result would occur by applying only some of the provisions of s.20(g)paragraph 2 to specials. This illogical manipulation of the conflict law surely was not the Legislature's intention in enacting the 1982 amendment.